

109TH CONGRESS  
1ST SESSION

# H. R. 709

To amend title XVIII of the Social Security Act to clarify the right of Medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the Medicare Program.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 9, 2005

Mr. SAM JOHNSON of Texas (for himself, Mr. HERGER, and Mr. NORWOOD) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to clarify the right of Medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the Medicare Program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicare Beneficiary  
5       Freedom To Contract Act of 2005”.

1 **SEC. 2. USE OF PRIVATE CONTRACTS BY MEDICARE BENE-**  
2 **FICIARIES FOR PROFESSIONAL SERVICES.**

3 (a) IN GENERAL.—Section 1802(b) of the Social Se-  
4 curity Act (42 U.S.C. 1395a) is amended to read as fol-  
5 lows:

6 “(b) CLARIFICATION OF USE OF PRIVATE CON-  
7 TRACTS BY MEDICARE BENEFICIARIES FOR PROFES-  
8 SIONAL SERVICES.—

9 “(1) IN GENERAL.—Nothing in this title shall  
10 prohibit a medicare beneficiary from entering into a  
11 private contract with a physician or health care  
12 practitioner for the provision of medicare covered  
13 professional services (as defined in paragraph  
14 (5)(C)) if—

15 “(A) the services are covered under a pri-  
16 vate contract that is between the beneficiary  
17 and the physician or practitioner and meets the  
18 requirements of paragraph (2);

19 “(B) under the private contract no claim  
20 for payment for services covered under the con-  
21 tract is to be submitted (and no payment made)  
22 under part A or B, under a contract under sec-  
23 tion 1876, or under an MA plan (other than an  
24 MSA plan); and

25 “(C)(i) the Secretary has been provided  
26 with the minimum information necessary to

1           avoid any payment under part A or B for serv-  
2           ices covered under the contract, or

3           “(ii) in the case of an individual enrolled  
4           under a contract under section 1876 or an MA  
5           plan (other than an MSA plan) under part C,  
6           the eligible organization under the contract or  
7           the MA organization offering the plan has been  
8           provided the minimum information necessary to  
9           avoid any payment under such contract or plan  
10          for services covered under the contract.

11          “(2) REQUIREMENTS FOR PRIVATE CON-  
12          TRACTS.—The requirements in this paragraph for a  
13          private contract between a medicare beneficiary and  
14          a physician or health care practitioner are as fol-  
15          lows:

16               “(A) GENERAL FORM OF CONTRACT.—The  
17               contract is in writing and is signed by the medi-  
18               care beneficiary.

19               “(B) NO CLAIMS TO BE SUBMITTED FOR  
20               COVERED SERVICES.—The contract provides  
21               that no party to the contract (and no entity on  
22               behalf of any party to the contract) shall sub-  
23               mit any claim for (or request) payment for  
24               services covered under the contract under part  
25               A or B, under a contract under section 1876,

1 or under an MA plan (other than an MSA  
2 plan).

3 “(C) SCOPE OF SERVICES.—The contract  
4 identifies the medicare covered professional  
5 services and the period (if any) to be covered  
6 under the contract, but does not cover any serv-  
7 ices furnished—

8 “(i) before the contract is entered  
9 into; or

10 “(ii) for the treatment of an emer-  
11 gency medical condition (as defined in sec-  
12 tion 1867(e)(1)(A)), unless the contract  
13 was entered into before the onset of the  
14 emergency medical condition.

15 “(D) CLEAR DISCLOSURE OF TERMS.—The  
16 contract clearly indicates that by signing the  
17 contract the medicare beneficiary—

18 “(i) agrees not to submit a claim (or  
19 to request that anyone submit a claim)  
20 under part A or B (or under section 1876  
21 or under an MA plan, other than an MSA  
22 plan) for services covered under the con-  
23 tract;

24 “(ii) agrees to be responsible, whether  
25 through insurance or otherwise, for pay-

1           ment for such services and understands  
2           that no reimbursement will be provided  
3           under such part, contract, or plan for such  
4           services;

5           “(iii) acknowledges that no limits  
6           under this title (including limits under  
7           paragraph (1) and (3) of section 1848(g))  
8           will apply to amounts that may be charged  
9           for such services;

10          “(iv) acknowledges that medicare sup-  
11          plemental policies under section 1882 do  
12          not, and other supplemental health plans  
13          and policies may elect not to, make pay-  
14          ments for such services because payment is  
15          not made under this title; and

16          “(v) acknowledges that the beneficiary  
17          has the right to have such services pro-  
18          vided by (or under the supervision of)  
19          other physicians or health care practi-  
20          tioners for whom payment would be made  
21          under such part, contract, or plan.

22          Such contract shall also clearly indicate whether  
23          the physician or practitioner involved is ex-  
24          cluded from participation under this title.

1           “(3) MODIFICATIONS.—The parties to a private  
2           contract may mutually agree at any time to modify  
3           or terminate the contract on a prospective basis,  
4           consistent with the provisions of paragraphs (1) and  
5           (2).

6           “(4) NO REQUIREMENTS FOR SERVICES FUR-  
7           NISHED TO MSA PLAN ENROLLEES.—The require-  
8           ments of paragraphs (1) and (2) do not apply to any  
9           contract or arrangement for the provision of services  
10          to a medicare beneficiary enrolled in an MA plan  
11          under part C.

12          “(5) DEFINITIONS.—In this subsection:

13               “(A) HEALTH CARE PRACTITIONER.—The  
14               term ‘health care practitioner’ means a practi-  
15               tioner described in section 1842(b)(18)(C).

16               “(B) MEDICARE BENEFICIARY.—The term  
17               ‘medicare beneficiary’ means an individual who  
18               is enrolled under part B.

19               “(C) MEDICARE COVERED PROFESSIONAL  
20               SERVICES.—The term ‘medicare covered profes-  
21               sional services’ means—

22                       “(i) physicians’ services (as defined in  
23                       section 1861(q), and including services de-  
24                       scribed in section 1861(s)(2)(A)), and

1 “(ii) professional services of health  
 2 care practitioners, including services de-  
 3 scribed in section 1842(b)(18)(D),  
 4 for which payment may be made under part A  
 5 or B, under a contract under section 1876, or  
 6 under a Medicare+Choice plan but for the pro-  
 7 visions of a private contract that meets the re-  
 8 quirements of paragraph (2).

9 “(D) MA PLAN; MSA PLAN.—The terms  
 10 ‘MA plan’ and ‘MSA plan’ have the meanings  
 11 given such terms in section 1859.

12 “(E) PHYSICIAN.—The term ‘physician’  
 13 has the meaning given such term in section  
 14 1861(r).”.

15 (b) CONFORMING AMENDMENTS CLARIFYING EX-  
 16 EMPTION FROM LIMITING CHARGE AND FROM REQUIRE-  
 17 MENT FOR SUBMISSION OF CLAIMS.—Section 1848(g) of  
 18 the Social Security Act (42 U.S.C. 1395w–4(g)) is amend-  
 19 ed—

20 (1) in paragraph (1)(A), by striking “In” and  
 21 inserting “Subject to paragraph (8), in”;

22 (2) in paragraph (3)(A), by striking “Payment”  
 23 and inserting “Subject to paragraph (8), payment”;

24 (3) in paragraph (4)(A), by striking “For” and  
 25 inserting “Subject to paragraph (8), for”; and

(4) by adding at the end the following new paragraph:

“(8) EXEMPTION FROM REQUIREMENTS FOR SERVICES FURNISHED UNDER PRIVATE CONTRACTS.—

“(A) IN GENERAL.—Pursuant to section 1802(b)(1), paragraphs (1), (3), and (4) do not apply with respect to physicians’ services (and services described in section 1861(s)(2)(A)) furnished to an individual by (or under the supervision of) a physician if the conditions described in section 1802(b)(1) are met with respect to the services.

“(B) NO RESTRICTIONS FOR ENROLLEES IN MSA PLANS.—Such paragraphs do not apply with respect to services furnished to individuals enrolled with MSA plans under part C, without regard to whether the conditions described in subparagraphs (A) through (C) of section 1802(b)(1) are met.

“(C) APPLICATION TO ENROLLEES IN OTHER PLANS.—Subject to subparagraph (B) and section 1852(k)(2), the provisions of subparagraph (A) shall apply in the case of an individual enrolled under a contract under section



1           1876 or under an MA plan (other than an MSA  
2           plan) under part C, in the same manner as they  
3           apply to individuals not enrolled under such a  
4           contract or plan.”.

5           (c) CONFORMING AMENDMENTS.—(1) Section  
6 1842(b)(18) of the Social Security Act (42 U.S.C.  
7 1395u(b)(18)) is amended by adding at the end the fol-  
8 lowing:

9           “(E) The provisions of section 1848(g)(8) shall apply  
10 with respect to exemption from limitations on charges and  
11 from billing requirements for services of health care prac-  
12 titioners described in this paragraph in the same manner  
13 as such provisions apply to exemption from the require-  
14 ments referred to in section 1848(g)(8)(A) for physicians’  
15 services.”.

16           (2) Section 1866(a)(1)(O) of such Act (42 U.S.C.  
17 1395cc(a)(1)(O)) is amended by striking “enrolled with a  
18 Medicare+Choice organization under part C” and insert-  
19 ing “enrolled with an MA organization under part C  
20 (other than under an MSA plan)”.

21           (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall take effect on the date that is 6 months  
23 after the date of the enactment of this Act and apply to  
24 contracts entered into on or after that date.

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